IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.861 OF 2000

State of Maharashtra)
(at the instance of Asstt.Conservator)
of forest, Forest Dept. Thane.) ...Petitioner
(Orig.Respondent)

V/s.

Sheikh Bashir Sheikh Lal,)
C/o. Bashir Auto Garage,)
Goregaon-Mulund Link Road,)
Opposite Pushpa Petrol Pump,)
Mulund(W), Mumbai - 80.) ...Respondent
(Orig.Appellant)

Ms.M.M. Deshmukh, APP for the State.

CORAM : V.M. KANADE, J.

DATED : APRIL 24, 2006

ORAL JUDGMENT :-

. By this writ petition, the petitioner State of Maharashtra seeks to challenge the order passed by the Sessions Judge, Thane, in Criminal Appeal No.34 of 1999 whereby the Sessions Judge was pleased to pass an order directing the petitioner to return the confiscated vehicle to the respondent.

2. Brief facts of the relevant case for the purpose of deciding this issue are as under :-

. On 31.12.98, one truck bearing Registration No.MH 04/H-5524 was seized by the forest officer while it was going towards Tilher. The driver of the truck was apprehended and on inspection, it was found that the forest produce was being illegally transported in the said truck. The driver of the truck was unable to produce the forest transit pass or other relevant documents which are necessary for the purpose of transportation of forest produce from the forest. A panchanama was drawn in the presence of panchas and the forest produce in the said truck was seized and the driver was arrested. The accused pleaded guilty in the presence of the forest officer that they were carrying the forest produce which was unauthorisedly fell from the Government forest. A show cause notice was issued to the owner of the truck on 16th February, 1999 and after giving due opportunity to the owner of the truck to put his defence and to cross-examine the Government witnesses, the Forest Officer passed an order confiscating the said truck.

3. The respondent-owner of the truck preferred an appeal against the said order in the Court of Sessions. The Sessions Judge by his order dated 29th March, 2000 allowed the criminal appeal and directed that the truck should be returned to the respondent.

4. The State being aggrieved by the said order filed this writ petition which was admitted and stay was granted to the order passed by the Sessions Judge.

5. Learned Counsel appearing on behalf of the petitioner-State of Maharashtra vehemently submitted that the order which was passed by the Forest Officer ought to have been confirmed by the Sessions Judge since the said order was passed after the opportunity was given to the respondent. It was submitted that the statement recorded by the Forest Officer ought to have been accepted by the Sessions Judge since as per the provisions of the Indian Forest Act, the evidence recorded before the Forest Officer is admissible in any subsequent trial before the Magistrate.

6. I have heard learned Counsel for the State of Maharashtra at length. She has taken me through the Judgment and Order of the Sessions Court. In the present case, it is an admitted position that the owner of the truck was not arrested though the said unauthorised forest produce was being transported. Though it is no doubt true that there is presumption raised under the provisions of the Forest Act, the said presumption can only be raised after the authorities establish that the owner of the truck had any knowledge about the likelihood of the truck was being used for carrying huge forest produce. In the present case, there is no evidence to establish even prima facie that the owner of the truck had knowledge of his truck being used for carrying unauthorised forest produce. Even the statement of the driver of the truck also does not establish that the owner had any knowledge that his driver was carrying illegal and unauthorised forest produce. The Sessions Court, in my view, therefore has taken a view that the two important aspects for the purpose of establishing the direct complicity of the truck driver having not being considered, set aside the

order of the Forest Officer.

7. In my view, there is no reason to interfere with the order passed by the Sessions Judge as it cannot be said that the Sessions Judge has committed an error of law apparent on the face of record. The order of the Sessions Judge, therefore, is confirmed.

8. Writ petition is rejected. Rule is discharged. Interim stay is vacated.

(V.M. Kanade, J.)